

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
GREGORIO FERNANDEZ-PEREZ,
Defendant.

Case No.: 3:16-cr-01294-001-BEN

**ORDER DENYING MOTION FOR
COMPASSIONATE RELEASE**

[ECF Nos. 78, 79, 80]

Pro se, Movant Gregorio Fernandez-Perez filed a Motion for Compassionate Release pursuant to 18 U.S.C. § 3582(c)(1)(A) ("Section 3582(c)(1)(A)"), as well as two addenda to that Motion. ECF Nos. 78-80. The Motion was referred to Federal Defenders pursuant to General Order 692-B. ECF No. 81. On June 3, 2021, Federal Defenders filed a Status Report and did not request appointment on Movant's behalf. *See* ECF No. 83.

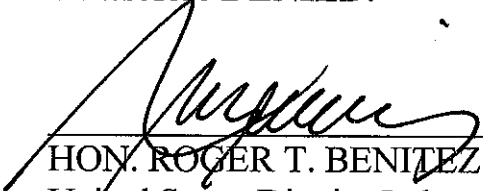
At this time, the Court recognizes there is no applicable policy statement governing compassionate release motions filed by defendants under the recent amendments to Section 3582(c)(1)(A). The Court also recognizes that a district court's discretion may be informed by U.S.S.G. § 1B1.13, but that it is not binding, and a district court may consider any extraordinary and compelling reason for release that a defendant might raise. *United States v. Aruda*, 993 F.3d 797, 801-02 (9th Cir. 2021).

1 Without deciding whether the Court agrees that Movant's circumstances are
2 "extraordinary and compelling," he is nonetheless not entitled to compassionate release
3 because his release would not afford adequate deterrence to criminal conduct. *See* 18
4 U.S.C. § 3553(a)(2)(B).

5 Movant is currently serving a 78-month sentence for possession of images of
6 minors engaged in sexually explicit conduct in violation of 18 U.S.C. § 2252(a)(4)(B).
7 While the sentence was below the recommended guideline range, the Court believed a
8 78-month sentence was appropriate given Movant's acceptance of responsibility and lack
9 of criminal history. Tr., ECF No. 51, 32. Nonetheless, the Court is also mindful that
10 when Movant was arrested, his computer contained 63 videos and 14 images of child
11 pornography. ECF No. 1, 4. In this case, a further reduction would not afford adequate
12 deterrence to criminal conduct. The motion is therefore **DENIED**.

13 **IT IS SO ORDERED.**

14 Date: June 16, 2021


15 HON. ROGER T. BENITEZ
16 United States District Judge
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